

THE PURITAN TRADITION

Community Above Ideology

DANIEL J. BOORSTIN

THE *Arbella*, a ship of three hundred and fifty tons, twenty-eight guns, and a crew of fifty-two, during the spring of 1630 was carrying westward across the Atlantic the future leaders of Massachusetts Bay Colony. The ship had sailed from Cowes in the Isle of Wight, on March 29, and was not to reach America till late June. Among the several ways of passing the time, of cementing the community and of propitiating God, perhaps the most popular was the sermon. The leader of the new community, John Winthrop, while preaching to his fellow-passengers, struck the keynote of American history. "Wee shall be," Winthrop prophesied, "as a Citty upon a Hill, the eies of all people are uppon us; soe that if wee shall deale falsely with our god in this worke wee have undertaken and soe cause him to withdrawe his present help from us, we shall be made a story and a by-word through the world." No one writing after the fact, three hundred years later, could better have expressed the American sense of destiny. In describing the Puritan experience we will see how this sense of destiny came into being, and what prevented it from becoming fanatical or utopian. The Puritan beacon for misguided mankind was to be neither a book nor a theory. It was to be the community itself. America had something to teach all men: not by precept but by example. . . .

Never was a people more sure that it was on the right track. "That which is our

greatest comfort, and meanes of defence above all others," Francis Higginson wrote in the earliest days, in *New-Englands Plantation*, "is, that we have here the true Religion and holy Ordinances of Almighty God taught among us . . . thus we doubt not but God will be with us, and if God be with us, who can be against us?" But their orthodoxy had a peculiar character. Compared with Americans of the 18th or the 19th century, the Puritans surely were theology-minded. The doctrines of the Fall of Man, of Sin, of Salvation, Predestination, Election, and Conversion were their meat and drink. Yet what really distinguished them in their day was that they were less interested in theology itself than in the application of theology to everyday life, and especially to society. From the 17th-century point of view their interest in theology was practical. They were less concerned with perfecting their formulation of the Truth than with making their society in America embody the Truth they already knew. Puritan New England was a noble experiment in applied theology.

The Puritans in the Wilderness—away from Old World centers of learning, far from great university libraries, threatened daily by the thousand and one hardships and perils of a savage America—were poorly situated for elaborating a theology and disputing its fine points. For such an enterprise John Calvin in Switzerland or William Ames in Holland was much better located. But for testing a theology, for seeing whether Zion could be rebuilt if men abandoned the false foundations of the centuries since Jesus—for this New England offered a rare opportunity. So it was that although the Puritans in the New World made the Calvinist theology their point of departure, they made it precisely that and nothing else. From it they departed at once into the practical life. Down to the middle of the 18th century, there was hardly an important work of speculative theology produced in New England.

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It was not that the writing of books was impossible in the New World. Rather, it was that theological speculation was not what interested the new Americans. Instead, there came from the New England presses and from the pens of New England authors who sent their works to England an abundance of sermons, textual commentaries, collections of "providences," statutes, and remarkable works of history. With the possible exception of Roger Williams, who was out of the stream of New England orthodoxy anyway, Massachusetts Bay did not produce a major figure in theology until the days of Jonathan Edwards in the mid-18th century. And by then Puritanism was all but dead.

During the great days of New England Puritanism there was not a single important dispute which was primarily theological. There were, to be sure, crises over who should rule New England, whether John Winthrop or Thomas Dudley or Harry Vane should be governor, whether the power or representation of different classes in the community should be changed, whether the Child Petition should be accepted, whether penalties for crime should be fixed by statute, whether the assistants should have a veto, whether outlying towns should have more representatives in the General Court. Even the disputes with Anne Hutchinson and Roger Williams primarily concerned the qualifications, power, and prestige of the rulers. If, indeed, the Puritans were theology-minded . . . they argued about institutions.

One gets the same impression in looking for evidences of political speculation, for philosophical inquiry into the nature of community and the function of government. Nothing in Puritanism itself was uncongenial to such speculation; Puritans in England at the time were discussing the fine points of their theory: What was the true nature of liberty? When should a true Puritan resist a corrupt civil government? When should diversity be tolerated? And we need not look only to giants like John Milton. The debates among the officers in Cromwell's Puritan Army between 1647 and 1649 reveal how different their intellectual atmosphere was from that of New England. They were not professional intellectuals, but soldiers and men of action; yet even they stopped to argue the theory of revolution and the philosophy of sovereignty. . . .

SEVENTEENTH-CENTURY America had none of the speculative vigor of English Puritanism. For Massachusetts Bay possessed an orthodoxy. During the classic age of the first generation, at least, it was a community of self-selected conformists. In 1637 the General Court passed an order prohibiting anyone from settling within the colony without first having his orthodoxy approved by the magistrates. Perhaps never again, until the McCarran Act, were our immigrants required to be so aseptic. John Winthrop was bold and clear in defense of the order. Here was a community formed by free consent of its members. Why should they not exclude dangerous men, or men with dangerous thoughts? What right had supporters of a subversive Mr. Wheelwright to claim entrance to the colony? "If we conceive and find by sadd experience that his opinions are such, as by his own profession cannot stand with externall peace, may we not provide for our peace, by keeping off such as would strengthen him and infect others with such dangerous tenets?"

In the eyes of Puritans this was the peculiar opportunity of New England. Why not for once see what true orthodoxy could accomplish? Why not in one unspoiled corner of the world declare a truce on doubts, on theological bickering? Here at last men could devote their full energy to *applying* Christianity—not to clarifying doctrine but to building Zion. . . . The Puritans in New England were surprisingly successful for some years at keeping their community orthodox. In doing so, they also made it sterile of speculative thought. Their principal theological treatises were works by William Ames (who never saw New England) and John Norton's *Orthodox Evangelist*, a rudimentary summary of the works of English divines. In England the presbyterians and independents and levelers within Puritanism were daring each other to extend and clarify their doctrines; but we see little of this in America. . . .

In New England the critics, doubters, and dissenters were expelled from the community; in England the Puritans had to find ways of living with them. It was in England, therefore, that a modern theory of toleration began to develop. Milton and his less famous and less reflective contemporaries were willing to debate, as if it were an open question,

"whether the magistrate have, or ought to have, any compulsive and restrictive power in matters of religion." Such was the current of European liberal thought in which Roger Williams found himself. But Williams was banished from Massachusetts Bay Colony and became a by-word of heterodoxy and rebellion. He died in poverty, an outcast from that colony. If his little Providence eventually prospered, it was never to be more than a satellite of the powerful orthodox mother-colony.

What actually distinguished that mother-colony in the great age of New England Puritanism was its refusal, for reasons of its own, to develop a theory of toleration. In mid-17th-century England we note a growing fear that attempts to suppress error would inevitably suppress truth, a fear that magistrates' power over religion might give them tyranny over conscience. "I know there is but one truth," wrote the author of one of the many English pamphlets on liberty of conscience in 1645, "But this truth cannot be so easily brought forth without this liberty; and a general restraint, though intended but for errors, yet through the unskillfulness of men, may fall upon the truth. And better many errors of some kind suffered than one useful truth be obstructed or destroyed." In contrast, the impregnable view of New England Puritanism was expressed in the words of John Cotton:

The Apostle directeth, Tit. 3.10 and giveth the Reason, that in fundamentall and principall points of Doctrine or Worship, the Word of God in such things is so cleare, that hee cannot but bee convinced in Conscience of the dangerous Errour of his way, after once or twice Admonition, wisely and faithfully dispensed. And then if any one persist, it is not out of Conscience, but against his Conscience, as the Apostle saith, vers. 11. He is subverted and sinneth, being condemned of Himselfe, that is, of his owne Conscience. So that if such a Man after such Admonition shall still persist in the Errour of his way, and be therefore punished; He is not persecuted for Cause of Conscience, but for sinning against his Owne Conscience.

The leaders of Massachusetts Bay Colony enjoyed the luxury, no longer feasible in 17th-century England, of a pure and simple orthodoxy.

The failure of New England Puritans to

develop a theory of toleration, or even freely to examine the question, was not in all ways a weakness. It made their literature less rich and gave much of their writing a quaint and crabbed sound, but for a time at least, it was a source of strength. Theirs was not a philosophic enterprise; they were, first and foremost, community-builders. The energies which their English contemporaries gave to sharpening the distinctions between "compulsive" and "restrictive" powers in religion, between "matters essential" and "matters indifferent" and to a host of other questions, which have never ceased to bother reflective students of political theory, the American Puritans were giving to marking off the boundaries of their new towns, to enforcing their criminal laws, and to fighting the Indian menace. Their very orthodoxy strengthened their practical bent.

American Puritans were hardly more distracted from their practical tasks by theology and metaphysics than we are today. They transcended theological preoccupation precisely because they had no doubts and allowed no dissent. Had they spent as much of their energy in debating with each other as did their English contemporaries, they might have lacked the singlemindedness needed to overcome the dark, unpredictable perils of a wilderness. They might have merited praise as precursors of modern liberalism, but they might never have helped found a nation.

THE practical temper, strengthened by New England orthodoxy and the opportunities of the New World, was not evidenced merely in the absence of theoretical treatises and abstract disputation. The New England sermon gave it vivid expression. During the first decades of settlement, the New England mind found its perfect medium and achieved its spectacular success in the sermon. This success would have been impossible without a firm orthodoxy and a practical emphasis. The Puritans of Massachusetts Bay thus foreshadowed the circumstances which, throughout American history, were to give peculiar prominence to the spoken . . . word.

The scarcity of monumental volumes on theoretical questions and the flood of spoken words have been complementary facts about American culture from the very beginning.

The public speech, whether sermon, commencement address, or whistle-stop campaign talk, is a public affirmation that the listeners share a common discourse and a common body of values. The spoken word is inevitably more topical than the printed word: it attempts to explain the connection between the shared community values and the predicament of man at a particular time and place. It is directed to people whom the speaker confronts, and to their current problems.

In the doctrine of all Protestantism there were, of course, special reasons for the importance of preaching. If priestly intermediaries between each soul and God were to be dispensed with, the message of the Gospel had to be brought home to each man. And what better means than the spoken word, in which an eloquent and learned man established the relation of the Word of God to the condition of those before him? Moreover, the 17th century was the great age of English sermons—and not only among Puritans. It was the age of John Donne and Jeremy Taylor, high Anglicans whose preachments were classics of the sermon form. By the mid-17th century, English Puritans had developed so distinctive a style of prose for their sermons that an attentive listener could discover the theology of a minister from the form of his preaching.

In contrast to the involved "metaphysical" style of Lancelot Andrewes and John Donne, the Puritans developed a manner which came to be known, in their own words, as the "plain" style. The rules of this style were codified into preachers' manuals like William Perkins' *Art of Prophecyng*, an English handbook found on nearly every book-list in early New England. The mark of the plain style was, of course, plainness. But it was also marked by greater attention to persuasion and the practical consequences of a doctrine than to the elaboration of the theory itself. The Puritan sermon, as Perry Miller explains, was "more like a lawyer's brief than a work of art." Its characteristic plan had three parts: "doctrines," "reasons," and "uses." The "doctrine" was what the preacher discovered by "opening" a Biblical text, which was always the starting point; the "reasons" supported the doctrine; and the "uses" were the application of the doctrine to the lives of the listeners—the "instruc-

tion" which came out of the sermon. . . .

In New England, the sermon was far more than a literary form. It was an institution, perhaps the characteristic institution of Puritanism here. It was the ritual application of theology to community-building and to the tasks and trials of everyday life. It was not, as it was inevitably in England, a mere sectarian utterance of a part of the community. It was actually the orthodox manifesto and self-criticism of the community as a whole, a kind of reiterated declaration of independence, a continual re-discovery of purposes. The pulpit, and not the altar, held the place of honor in the New England meeting-house. So too the sermon itself, the specific application of the Word of God, was the focus of the best minds of New England. What most encouraged Higginson to believe his colony might become an example of the true religion was not the simple rectitude of Puritan doctrine, but "that we have here the true Religion and holy Ordinances of Almighty God taught among us: Thankes be to God, we have plentie of Preaching, and diligent Catechizing."

In England, after the collapse of the Puritan political program in 1660, individual Puritans were thrown back upon themselves. They became introspective: each Puritan sought, as in *Grace Abounding*, to perfect himself, with scant regard to the community. In America, where the Puritans were remote from English domestic politics, they remained free to continue their social enterprise. The history of the New England pulpit is thus an unbroken chronicle of the attempt of leaders in the New World to bring their community steadily closer to the Christian model.

THE New England meeting-house, like the synagogue on which it was consciously modeled, was primarily a place of instruction. Here the community learned its duties. Here men found their separate paths to conversion, so they could better build their Zion in the wilderness, a City upon a Hill to which other men might in their turn look for instruction. As the meeting-house was the geographical and social center of the New England town, so the sermon was the central event in the meeting-house. The sermon was as important a ritual as the oc-

casions on which ancient Mesopotamians learned from their priests the dooms passed in the legislature of their Gods. In New England the ministers were, in their own words, "opening" the texts of the Bible by which they had to live and build their society. The sermons were thoroughly theological and yet thoroughly practical: based on common acceptance of a theology, which left to the minister only the discovery of its "uses" for converting saints and building Zion.

The occasions of the sermon, most of which have been too easily forgotten, bear witness to its central place in the life of early New England. There were two sermons on the Sabbath, and usually a lecture-sermon on Thursday. Attendance was required by law; absence was punishable by fine (an Act of 1646 fixed five shillings for each offense). The laws described the Sabbath ritual as "the publick ministry of the Word." There was hardly a public event of which the most memorable feature was not the sermon. Most distinctive, perhaps, were the election-day sermons, by which the clergy affected the course of political events and which remained a New England institution through the American Revolution. These explained the meaning of the orthodox theology for the choices before the voters, described the character of a good ruler and the mutual duties of the people and their governors. The artillery sermons, which were delivered on the occasion of the muster of the militia and their election of officers, began in about 1659. In addition, the numerous (10 in Massachusetts Bay in 1639; 50 in 1675-76) Fast and Thanksgiving Days were focused on the sermon, which explained to the people why God was humbling or rewarding them. . . .

If attendance at the sermon was compulsory, it was expected to be anything but perfunctory. The scarcity of books and the significance of the subject induced many listeners to bring notebooks. A minister, commonly settled in a parish for his lifetime, did not look for a larger or more wealthy congregation. Moreover, his audience was, for that age, remarkably literate and attentive, and he could not hope to amuse or divert them by "book reviews," by concert artists, or outside speakers. All these circumstances served to hold the early New Eng-

land preacher to a high intellectual standard and encouraged him to make his performances merit their central place. The New England sermon, then, was the communal ceremony which brought a strong orthodoxy to bear on the minutiae of life—the drowning of a boy while skating on the Charles, an earthquake, a plague of locusts, the arrival of a ship, the election of a magistrate, or the mustering of militia. Theology was an instrument for building Zion in America.

TO THE Puritans and to many who came here after them, the American destiny was inseparable from the mission of community-building. For hardly a moment in the history of this civilization would men turn from the perfection of their institutions to the improvement of their doctrine. Like many later generations of Americans, the Puritans were more interested in institutions that functioned than in generalities that glittered. The phrase "The New England Way" was an earlier version (not entirely different in spirit though vastly different in content) of the modern notion of an American Way of Life. What the Puritans wanted to "purify" in the English church was not its theology but its policy, not its theory but its practice. New Englanders were outspokenly conformist in matters of doctrine. "Be it so that we are in the utmost parts of the Earth," explained John Norton, "we have onely changed our Climate, not our mindes." Again and again when the leaders of American Puritanism met, they proclaimed their orthodoxy. This was revealed in the very form of their statements. The basic documents of New England Puritanism were not "creeds" but "platforms." Nearly two centuries before the first American political party produced its "platform" attesting to its greater concern for a program of action than for a frame of thinking, American Puritans had struck off in the same direction. The clearest statement of their religious purposes came out of a meeting of the church elders in Cambridge in 1648. Published under the title, "A Platform of Church Discipline," it came to be known as "The Cambridge Platform." The ministers declared:

Our Churches here, as (by the grace of Christ) wee beleive and profess the same Doctrine of the trueth of the Gospell, which generally is

received in all the reformed Churches of Christ in Europe: so especially, wee desire not to vary from the doctrine of faith, & truth held forth by the churches of our native country . . . wee, who are by nature, English men, doe desire to hold forth the same doctrine of religion (especially in fundamentalls) which wee see & know to be held by the churches of England, according to the truth of the Gospell.

What disturbed the people of New England, according to John Cotton's preface, was "the unkind, & unbrotherly, & unchristian contentions of our godly brethren, & countrymen, in matters of church-government." To the improvement of church government, the New England clergy pledged its efforts. The text of the "platform," the manifesto of New England congregationalism and its basis for over a half-century, was devoted only to these practical ends.

The orthodoxy of New England churches is a refrain heard again and again in the early synods. "As to matters of Doctrine," the ministers declared in Boston in 1680, "we agree with other Reformed Churches: Nor was it that, but what concerns Worship and Discipline, that caused our Fathers to come into this wilderness, whiles it was a land not sown, that so they might have liberty to practice accordingly." A half-century later, in 1726, Cotton Mather insisted that still the doctrine of the Church of England was more universally held and preached in New England than in any nation, that their only "points peculiar" were those of discipline.

The Puritans' emphasis on way of life was so strong that it made any generalized concept of "the church" seem unreal or even dangerous. They became wary of using the word "church" to refer to those who subscribed to a particular body of doctrine, or even to the building in which the congregation met. New Englanders called their place of worship a "meeting-house." It was a dangerous figure of speech, Richard Mather once observed, to call that meeting-house a "church." "There is no just ground from scripture to apply such a trope as church to a house for a public assembly." For years, therefore, when the men of New England spoke of what they had to offer the world, they referred neither to their "creed" nor their "church," but to The New England Way. . . .

The basic fact about congregationalism was its emphasis on the going relationship among men. Each church was not a part of a hierarchy, nor a branch of a perfected institution, but a kind of club composed of individual Christians searching for a godly way of life. The congregational church was a group of going concerns, not a monolithic establishment. When they used the word at all, Puritans usually spoke of the "churches" rather than the "church" of New England. What held them together was no unified administrative structure, but a common quest, a common way of living. At the heart of the congregational idea was the unifying notion that a proper Christian church was one adapted to the special circumstances of its place and arising out of the continuing agreement of certain particular Christians. What of the *manner* of church-worship? asked the opening chapter of the Cambridge Platform. Its answer was simply that worship "be done in such a manner, as all Circumstances considered, is most expedient for edification: so, as if there bee no error of man concerning their determination, the determining of them is to be accounted as if it were divine." The size of a congregation was also to be fixed by practical considerations. "The *matter* of the Church in respect of its *quantity* ought not to be of greater number than may ordinarily meet together conveniently in one place: nor ordinarily fewer, then may conveniently carry on Church-work." Each congregation had its own problems, "Vertues of their own, for which others are not prayed: Corruptions of their owne, for which others are not blamed."

A CHURCH was formed, then, not by administrative fiat nor by the random gathering of professing Christians, but by the "covenanting" or agreement of a group of "saints," that is, Christians who had had a special "converting" experience. The status of minister was not acquired from a seminary or by the laying on of priestly hands. Rather it was a function performed by a godly man in relation to a group of other men. To be a minister at all a man had to be "called" by a group of Christians; when that relation ceased, he was no longer a minister. In the congregational polity, relations among men overshadowed inherited or

anointed status: the ways overshadowed the forms.

Not least important in encouraging this point of view was the Puritan use of the Bible. If there was any codification of Puritan beliefs, it was in the Word of God. The Puritans wished to be "guided by one rule, even the Word of the most high." More perhaps than for any other Christians of their age, the Bible was their guide. Through it, they explained in the Cambridge Platform, every man could find the design of life and the shape of the Truth. . . .

But to try to live by the Bible was vastly different from trying to live by the Laws of the Medes and the Persians, by the Athanasian Creed, or even by the Westminster Confession. For the Bible was actually neither a codification nor a credo; it was a narrative. From this simple fact came much of the special character of the Puritan approach to experience. There were, of course, parts of the Bible (like Leviticus and Deuteronomy) which contained an explicit code of laws; the Puritans were attracted to these simply because the commands were so clear. The Ten Commandments were, of course, in the foreground of their thinking, but the Bible as a whole was the law of their life. For answers to their problems they drew as readily on Exodus, Kings, or Romans, as on the less narrative portions of the Bible. Their peculiar circumstances and their flair for the dramatic led them to see special significance in these narrative passages. The basic reality in their life was the analogy with the Children of Israel. They conceived that by going out into the Wilderness, they were reliving the story of Exodus and not merely obeying an explicit command to go into the wilderness. For them the Bible was less a body of legislation than a set of binding precedents.

The result was that these Puritans were preoccupied with the similarities in pairs of situations: the situation described in a Bible story and that in which they found themselves. "Thou shalt not kill" was accepted without discussion. What interested them, and what became the subject of their debate was whether, and how and why, an episode in the Bible was like one in their own lives. The "great and terrible Earthquake" of June 1, 1638, and the one of January 14, 1639, "which happened much about the time the

Lordly Prelates were preparing their injunctions for . . . roared from Sion, (as in the dayes of the Prophet Amos)." Almost every page of early New England literature provides an example. "The rule that directeth the choice of supream governors," wrote John Cotton, "is of like aequitie and weight in all magistrates, that one of their brethren (not a stranger) should be set over them, Deut. 17.15 and Jethroes be set over the people, should be men fearing God, Exod, 18.21, and Solomon maketh it the joy of a commonwealth, when the righteous are in authority, and their mourning when the wicked rule, Prov. 20.21. Job 34.30."

What the Puritans had developed in America was a practical common-law orthodoxy. Their heavy reliance on the Bible, and their preoccupation with platforms, programs of action, and schemes of confederation—rather than with religious dogma—fixed the temper of their society, and foreshadowed American political life for centuries to come.

AMONG the circumstances which led the American Puritans to a practical approach to their doctrine, none was more important than the fact that they were colonials. However clear and dogmatic the dictates of their religion, they did not consider themselves free to construct their political institutions of whole cloth. Their fellow-Calvinists in Geneva several decades before had been limited only by their private aspirations and the demands of their dogma. But even in earliest New England one can see the marks of that colonial situation which would decisively affect all American political thought through the era of the Revolution, and which helped shape the moderate, compromising, and traditionalist character of our institutions. The effects of this colonial situation can be seen, first, in the widely accepted assumption that there were definite limits which the legislators were not free to transgress—this, in a word, was constitutionalism—and, second, in the idea that the primary and normal way of developing civil institutions was by custom and tradition rather than by legislative or administrative fiat. These were rooted less in a deliberate political preference than in the circumstance in which the New England Puritans found themselves.

In the first charter of Massachusetts Bay

Colony in 1629, King Charles had authorized the General Court of the colony to make "all Manner of wholesome and reasonable Orders, Lawes, Statutes, and Ordinances, Direcons, and Instrucons"—but with the provision that they be "not contrarie to the Lawes of this our Realme of England." The colonists, though not lawyers, were of a decidedly legalistic turn of mind; they took this limitation seriously. It was appealed to from all sides, by the ruling clique as well as by the critics and rebels.

The story of the struggle for law in early New England has not yet been fully told. But even what we already know shows that the rulers of this Bible commonwealth were haunted by the skeleton of old English institutions. At every point both rulers and rebels felt bound to assume that an authentic Bible commonwealth could not depart far from the ancient institutions of the mother country. As early as 1635, Winthrop tells us, the deputies were worried that the magistrates "for want of positive laws, in many cases, might proceed according to their discretions." The remedy which they sought, and which they persuaded the General Court to adopt, was plainly on the English pattern: "that some men should be appointed to frame a body of grounds of laws, in resemblance to a *Magna Charta*, which . . . should be received for fundamental laws."

The legislative history of early New England is the story of successive attempts to provide, first, a "Magna Charta" for the inhabitants of Massachusetts Bay Colony and, later, a handy compilation of their laws. The small ruling group of early New England was not eager to embody its institutions in an all-embracing code. Leaders like John Winthrop doubted the wisdom of confining institutions by a pattern of words; they also doubted their authority. They were hardly more worried that their laws should be "scriptural," that is approved by the Bible, than that they should be sufficiently English; and that any changes in English laws should have ample warrant in local needs.

We have been almost blind to this side of early New England life. Dazzled by the light they found in Scripture, we have failed to see the steady illumination they found in old English example. For instance, when historians came upon a little work by John Cotton entitled *Moses His Judicials*, they

hastily concluded that since it was Biblical and dogmatic it must have been the Code of Massachusetts Bay. But the evidence shows that his code was never adopted into law, and it may never have been intended to be.

The lawmakers of the colony, to the extent their knowledge allowed and with only minor exceptions, actually followed English example. Their colonial situation made them wary of trying to create institutions according to their own notions, and alert to the need of adapting old institutions to new conditions. They were among the first to take a consciously pragmatic approach to the common law; and it was their colonial situation which gave them the occasion. . . .

THE most important of the early compilations of Massachusetts law was *The Book of the General Lawes and Libertyes* of 1648 which was to be the basis of later legislation and which influenced the laws of other colonies, including Connecticut and New Haven. The preface published by the General Court apologized for the inadequacy of the compilation both as a reproduction of English institutions and as an adaptation to colonial conditions.

We have not published it as a perfect body of laws sufficient to carry on the Government established for future times, nor could it be expected that we should promise such a thing. For if it be no disparagement to the wisdom of the High Court of Parliament in England that in four hundred years they could not so compile their lawes, and regulate proceedings in Courts of Justice &c: but that they had still new work to do of the same kinde almost every Parliament: there can be no just cause to blame a poor Colonie (being unfurnished of Lawyers and Statesmen) that in eighteen years hath produced no more, nor better rules for a good, and settled Government then this Book holds forth: nor have you (our Brethren and Neighbours) any cause, whether you look back upon our Native Country, or take your observation by other States, & Common wealths in Europe) to complaine. . . .

The Puritans of Massachusetts Bay said that they started from "the lawes of God" rather than the laws of Englishmen. Yet in their eyes, the two seemed happily to coincide. . . .

Their satisfaction was as great as that of Sir William Blackstone a century later and

of conservative English lawyers ever since, in discovering that scriptural law and/or natural law happened already to be embodied in the English rules.

Scholarly dispute as to whether early New England law was primarily scriptural or primarily English is beside the point. For early New Englanders these two turned out to be pretty much the same. Very little of their early legal literature attempted to construct new institutions from Biblical materials. They were trying, for the most part, to demonstrate the coincidence between what the Scriptures required and what English law had already provided.

We have at least one valuable witness on this matter. Thomas Lechford had had some legal training in England, and although he was in Massachusetts Bay only from 1638 to 1641, those were the crucial years when the Body of Liberties of 1641 was put together. Partly through his own forwardness and partly from the scarcity of legal talent in the colony, he was intimately connected with its legal history. But, because neither his theology nor his method of persuading jurors was orthodox, the magistrates disbarred him and censured him for meddling in such affairs. These and other irritations led him to return to England permanently, where in 1642 he issued a little book, *Plain Dealing: or Newes from New-England*. Its object (stated on the title-page) was to give "A short view of New-Englands present Government, both Ecclesiasticall and Civil, compared with the anciently-received and established Government of England." Lechford—an unsympathetic, if not actually malicious, observer—was distinguished from his contemporaries by some legal knowledge and by personal experience with New England institutions. His book is an informed, though not dispassionate, account of deviations, which he eagerly sought out, of New English from Old English laws.

LECHFORD'S main complaint was, of course, about the churches of Massachusetts Bay. On the one hand, their membership requirements were too strict: it was not enough for a person to be of blameless conduct or to subscribe to the articles of faith. The applicants for church-membership had to satisfy the Elders and then the whole congregation of "the worke of grace upon

their soules, or how God hath beene dealing with them about their conversion . . . that they are true beleevers, that they have beene wounded in their hearts for their originall sinne, and actuall transgressions, and can pitch upon some promise of free grace in the Scripture, for the ground of their faith, and they finde their hearts drawne to beleieve in Christ Jesus, for their justification and salvation . . . and that they know competently the summe of Christian faith." This procedure, Lechford observed, was evil—even inhuman—for sometimes a master would be admitted and not his servant, sometimes the servant alone, sometimes a husband and not his wife, sometimes a child and not his parent. The effects of these restrictions were far-reaching since no one could be a "freeman" of the colony unless he had been admitted to the church. And only "freemen" could vote or hold office.

On the other hand Lechford thought the government of New England churches was too democratical, for there were no bishops, and how could a church be well-ordered where in effect every church-member was a bishop? Yet this was precisely what the congregational organization amounted to. "If the people may make Ministers, or any Ministers make others without an Apostolicall Bishop, what confusion will there be? If the whole Church, or every congregation, as our good men think, have the power to the keyes, how many Bishops then shall we have?"

Although the congregational churches of New England never acquired a bishop, even before the end of the 17th century their practical, compromising spirit had led them to modify the strict requirements for church-membership to which Lechford and other English critics objected. By the ingenious doctrine of the "Half-Way Covenant," first officially proposed in the meeting of ministers in 1662, they created a new class of church-membership for those who had not had the intense "converting experience" but who were descended from those who had the experience. In this way they kept the church-benches filled without abandoning their ideal of a purified church where only "visible Saints" could be full members.

A careful look at Lechford's criticism of the laws of New England impresses one with how little they deviated from English

practice. Even these deviations were easily explained by life in a wilderness colony, and would be removed as soon as the New Englanders could manage it. His first objection was the "want of proceeding duly upon record"—the legal proceedings were carried on orally rather than by exchange of documents. According to Lechford, this tended to make the government arbitrary, depriving the parties and judges of a clear understanding of the issues and making it more difficult to formulate precedents. His second objection, akin to the first, was the prohibition of paid attorneys and advocates. He declared hired lawyers "necessary to assist the poore and unlearned in their causes, and that according to the warrant and intendment of holy Writ, and of right reason. I have knowne by experience, and heard divers have suffered wrong by default of such in New England. . . . But take heede my brethren, despise not learning, nor the worthy Lawyers of either gown, lest you repent too late."

Both these divergences from English practice were due to the lack of trained lawyers. Lechford himself was one of the very few men of legal training in Boston; even judges were commonly untrained in the law. Complex legal documents could not be drawn, nor professional legal counsel given, except by trained lawyers; and, for all practical purposes, such were not to be found in New England.

THE magistrates of New England were soon to remove the differences of which Lechford complained. The Body of Liberties of 1641 (Liberty No. 27) provided that if the plaintiff filed a written declaration, the defendant was to have "libertie and time to give in his answer in writings, And soe in all further proceedings betwene partie and partie." A law of 1647 which described the evils to which Lechford referred went still further, requiring such a written declaration to be filed in all civil cases in due time before court opened, so that the defendant would have time to prepare his written answer. But such procedures could not be legislated into being if the community lacked qualified persons to put them into practice. Therefore this requirement was omitted from later compilations of the laws, and it was decades before written "pleadings" (the

technical documents which lawyers exchange during a lawsuit) became common. Meanwhile, the absence of written pleadings sometimes gave New England litigants the advantage of having their cases judged on their substance, while English lawyers and judges might quibble over the forms of documents. Increasing commerce and the growing number of men with legal training soon led the legislature of Massachusetts Bay to remove Lechford's other objection: by 1648 it had become legal to employ paid attorneys.

Legal proceedings of the early years give us the impression of a people without much legal training and with few lawbooks who were trying to reproduce substantially what they knew "back home." Far from being a crude and novel system of popular law, or an attempt to create institutions from pure Scripture, what they produced was instead a layman's version of English legal institutions. The half-remembered and half-understood technical language of English lawyers was being roughly applied to American problems. Much remains to be learned of the law of those days; and the very characteristics we have described (the lack of written pleadings, for example) handicap the historian. Cases were not printed; judges did not give reasons for their decisions. Even in the 1670's judicial precedents (English or colonial) or English statutes were not yet being cited. . . .

Whenever the rulers of New England found themselves and their laws under attack, their first defense was to show how closely their rules adhered to those of England. The General Court of Massachusetts Bay always argued that the coincidence of New English and Old English laws was remarkable. When hard pressed they went on to argue that even the apparent deviations from English law were themselves justified by the laws of England, under which "the city of London and other corporations have divers customs and by-laws different from the common and statute laws of England."

The scarcity of English lawbooks troubled them. The General Court on November 11, 1647, "to the end we may have the bettr light for making and proceeding about laws" ordered the purchase of two copies each of six technical English legal works: Coke on Littleton, The Book of Entries, Coke on Magna Charta, New Terms of the Law,

Dalton's *Justice of the Peace*, and Coke's *Reports*. The form of early Massachusetts legal documents (deeds, powers of attorney, leases, bonds, partnership agreements, etc.) suggests that they were copied from the same handbooks which guided English lawyers.

If we do not look at the form or language of their law but at its substance, we are again impressed by how few changes were made in New England. The most dramatic and most obvious were in the list of capital crimes. To those crimes punishable by death under the laws of England, the colonists by 1648 had added a number of others, including idolatry (violations of the First Commandment), blasphemy, man-stealing (from *Exod.* 21.16), adultery with a married woman, perjury with intent to secure the death of another, the cursing of a parent by a child over 16 years of age (*Exod.* 21.17), the offense of being a "rebellious son" (*Deut.* 21.20-21), and the third offense of burglary or highway robbery. These were clear cases where the laws of Scripture were allowed to override the laws of England.

But before we attach too much significance to these deviations, we must remember that in the law of capital crimes, both Englishmen and Americans were accustomed to the greatest divergence between practice and theory in those days. In England the merciful fictions of "benefit of clergy" nullified the letter of the law; in New England the practice of public confession perhaps accomplished a similar result. All this, of course, made the New England modifications of the criminal law still less significant. This was a realm where people were accustomed to unenforced rules and where scriptural orthodoxy could be purchased with the least change in the actual ways of daily life.

IF THERE was ever a people whose intellectual baggage equipped them for a journey into Utopia it was the New England Puritans. In their Bible they had a blueprint for the Good Society; their costly expedition to America gave them a vested interest in believing it possible to build Zion on this earth. In view of these facts it is remarkable that there was so little of the utopian in their thinking about society. There are a number of explanations for this. The English law was a powerful and sobering influence: col-

onists were persuaded by practical interests such as the retention of their charter and the preservation of their land-titles, as well as by their sentimental attachment to the English basis of their legal system. The pessimism, the vivid sense of evil, which was so intimate a part of Calvinism discouraged daydreams. Finally, there was the overwhelming novelty and insecurity of life in the wilderness which made the people more anxious to cling to familiar institutions, and led them to discover a new coincidence between the laws of God and the laws of England (and hence of New England).

The peculiar character of their Biblical orthodoxy nourished a practical and non-utopian frame of mind. Their political thought did not turn toward delineating The Good Society precisely because the Bible had already offered the anatomy of Zion. Moreover, the Bible was a narrative and not a speculative work; theirs was at most a common-law utopianism, a utopianism of analogies in situation rather than of dogmas, principles, and abstractions.

Perhaps because their basic theoretical questions had been settled the Puritans were able to concentrate on human and practical problems. And strangely enough, those problems were a preview of the ones which would continue to trouble American political thought. They were concerned less with the ends of society than with its organization and less with making the community good than with making it effective, with insuring the integrity and self-restraint of its leaders and with preventing its government from being oppressive.

The problems which worried the Puritans in New England were three. The first was how to select leaders and representatives. From the beginning what had distinguished the Puritans (and had laid them open to attack by Lechford and others) was their strict criterion of church-membership, their fear that if the unconverted could be members of the church they might become its rulers. Their concept of a church was, in its own very limited way, of a kind of ecclesiastical self-government: there were to be no bishops because the "members" of each church were fit to rule themselves. Many of the major disputes of early New England were essentially debates over who were fit rulers and how they should be selected. The

early political history of Massachusetts Bay could almost be written as a history of disagreements over this problem. What were to be the relations between the magistrates and the deputies? How many deputies from each town? Many of their sermons and even their "speculative" writings were on this subject.

Their second concern was with the proper limits of political power. This question was never better stated than by John Cotton. "It is therefore most wholesome for Magistrates and Officers in Church and Commonwealth never to affect more liberty and authority then will do them good, and the People good; for what ever transcendent power is given will certainly over-run those that give it, and those that receive it: There is a straine in a mans heart that will sometime or other runne out to excesse unlesse the Lord restraine it, but it is not good to venture it: It is necessary therefore, that all power that is on earth be limited. . . ." The form of the early compilations of their laws shows this preoccupation. The first compilation of Massachusetts law (1641) was known, significantly, as "The Body of Liberties" and managed to state the whole of the legal system in terms of the "liberties" of different members of the community. It began with a paraphrase of Magna Charta, followed by the limitations on judicial proceedings, went on to the "liberties" of free-men, women, children, foreigners, and included those "of the brute creature." Even the law of capital crimes was stated in the form of "liberties," and the church organization was described as the "Liberties the Lord Jesus hath given to the Churches." The preamble to this first Body of Liberties would have been impressive, even had it not come out of the American wilderness:

The free fruition of such liberties Immunities and priveledges as humanitie, Civilitie, and

Christianitie call for as due to every man in his place and proportion without impeachment and Infringement hath ever bene and ever will be the tranquillitie and Stabilitie of Churches and Commonwealths. And the deniall or deprivall thereof, the disturbance if not the ruine of both.

The Puritans' third major problem was what made for a feasible federal organization? How should power be distributed between local and central organs? Congregationalism itself was an attempt to answer this question with specific institutions, to find a means by which churches could extend "the free hand of fellowship" to one another without binding individual churches or individual church-members to particular dogmas or holding them in advance to the decisions of a central body. The practical issues which did not fall under either of the two earlier questions came within this class. What power, if any, had the General Court of the colony over the town of Hingham in its selection of its captain of militia? This was the occasion when one of the townspeople "professeth he will die at sword's point, if he might not have the choice of his own officers." Or, what was the power of the central government to call a church synod? The deputies of the towns (in a dispute over the character of their union which foreshadowed the issues of the Revolution and the Civil War) were willing to consider an invitation to send delegates, but objected to a command.

All the circumstances of New England life—tradition, theology, and the problems of the new world—combined to nourish concern with such practical problems. It is easy to agree with Lechford's grudging compliment that "wiser men then they, going into a wilderness to set up another strange government differing from the settled government here, might have falne into greater errors then they have done."